

### **REMARKS**

Applicant has carefully reviewed and considered the Office Action mailed on February 7, 2006, and the references cited therewith. In the Office Action, claims 77-85 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,583,548 to Schmid (hereinafter "Schmid"). Claims 77-82, 84 and 88 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,972,196 to Murphy, et al., (hereinafter "Murphy"). Claims 89-90 were then rejected under 35 U.S.C. §103(a) as being unpatentable over Schmid. Claims 86 and 87 were rejected as being unpatentable under 35 U.S.C. §103(a) over Schmid and further in view of any one of U.S. Patent No. 6,007,943 to Coetzer., (hereinafter "Coetzer"), U.S. Patent No. 5,766,789 to James et al., (hereinafter "James") or U.S. Patent No. 4,020,246 to Seo et al., (hereinafter "Seo"). Claims 86-87 were then rejected under 35 U.S.C. §103(a) as being unpatentable over Murphy in further view of any of Coetzer, James, or Seo.

Claims 77-90 are pending in the Application. By this paper, claims 77 and 83 are amended. Applicant respectfully requests reconsideration of the claims as amended above in light of the below arguments.

#### **§102 Rejection of the Claims**

Claims 77-85 were rejected under 35 USC §102(b) as being anticipated by Schmid. In order for a reference to anticipate a claim under 35 U.S.C. §102(b), "each and every element as set forth in the claim [must be] found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), *cited in* MPEP §2131. The MPEP further clarifies that "[t]he identical invention must be shown in as complete detail as is contained in the claim." MPEP §2131, *quoting* *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Applicant asserts that as amended above, claims 77-85 are not properly anticipated by Schmid and thus respectfully requests that this rejection be withdrawn.

Claim 77, as amended, teaches "[a] solid electrolyte conductor including an anode, a cathode, and a unitary non iodine ion-releasing electrolyte component."

Schmid teaches sanitation by the production of iodine. Schmid requires an electrode arrangement that contains "iodine ion-forming substance and/or . . . a contact-electrolyte layer [that] contains an iodine ion-forming salt . . . ." The Schmid device is an iodine generator. Applicant's invention does not produce iodine. Applicant's invention, as currently claimed, uses a non iodine ion-releasing electrolyte. Accordingly, Schmid does not teach every element of independent claim 77 or any claims depending there from and Applicant respectfully requests withdrawal of this rejection.

Claims 77-82, 84, and 88 were rejected under 35 U.S.C. §102(b) as being anticipated by Murphy. As with Schmid above, Murphy fails to teach each and every element of the claims of the present invention, and thus, does not support a rejection under 35 U.S.C. §102(b), and should thus be withdrawn. Murphy teaches the creation of ozone by water electrolysis. See Murphy, Col. 8, lines 47-66. The Examiner uses Murphy as a reference for applying ozone to a chamber where an item can be sterilized. In Murphy, the ozone is produced by electrochemical synthesis and "utilized either in aqueous solutions directly from the cell or after disengaging the ozone gas from the water." See Murphy, Col 24, lines 8-11. In either case, water is a component of everything that Murphy teaches. In contrast, Applicant's claim 77, as amended, does not utilize water. Accordingly, Murphy not only fails to teach the not utilization of water, it teaches away from Applicant's invention. As a result, Murphy fails to anticipate each and every element of claim 77 and claims depending there from and is thus insufficient to support a rejection under 35 U.S.C. §102(b).

#### '103 Rejection of the Claims

Claims 89-90 and 86-87 were rejected under 35 USC §103(a) as being unpatentable over Schmid, and in view of Schmid or Murphy in view of any one of U.S. Patent No.: 6,007,943, to Coetzer, U.S. Patent No.: 5,766,789 to James et al., or U.S. Patent No.: 4,020,246 to Seo et al. The MPEP explains that there are "three basic criteria" which "must be met" to establish a prima facie case of obviousness:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference

ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

MPEP 2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In the absence of any of these, an obviousness rejection is improper. Applicant asserts that in light of the amendments and the arguments presented above, neither Schmid nor Murphy teaches each and every element of the claims. Additionally, Schmid alone or the combination of Schmid or Murphy with Coetzer, James, or Seo also fails to teach every element of the claims. As a result, Applicant respectfully requests withdrawal of this rejection.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (801-978-2186) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-3586.

Respectfully submitted,

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By his representative,  
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Date

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By

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